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OFFICE OF PETITIONS

In re Application of DesJardins et al. :
Application No. 09/893,101 : Decision on Petition
Filing Date: June 26, 2001 :
Attorney Docket No. 006491.P036 :

This is a decision on the petition under 37 CFR 1.137(b), filed September 6, 2005, to revive the above-identified application. The petition is also being sua sponte treated under 37 CFR 1.181 (no fee) as a petition to withdraw the holding of abandonment.

The petition under 37 CFR 1.181 is **granted**.

The petition under 37 CFR 1.137(b) is **dismissed as moot**.

Facts:

A non-final Office action was mailed on July 9, 2003.

A response to the Office action was filed August 22, 2003. The response included a revocation and new power of attorney.

The new power of attorney requested the address listed at the top of the instant decision become the correspondence address of record.

For unknown reasons, the revocation and power of attorney paper were not entered.

On October 6, 2004, the Office mailed a Notice of Allowance and Notice of Allowability. The Notices were addressed to:

Jim H. Salter
BLAKELY, SOKOLOFF, TAYLOR AND ZAFMAN LLP
1279 Oakmead Parkway
Sunnyvale, CA 94085

Petitioner did not receive the Notices.

On December 13, 2004, petitioner submitted an IDS.

On August 24, 2005, the Office mailed a Notice to petitioner stating the December 13, 2004 IDS would not be considered because it had been filed after the mailing of a Notice of Allowance.

Although a Notice of Abandonment has not been mailed, the application *appeared* to be abandoned as a result of petitioner's failure to respond to the Notice of Allowance.

The instant petition, RCE, and copy of the prior IDS were filed on September 6, 2005.

Analysis:

The Office has the discretion to consider the propriety of any holding of abandonment before considering the merits of a petition to revive.

A review of the file indicates the Notice of Allowance and Notice of Allowability should have been mailed to a different address. Petitioner did not receive the Notices due to PTO error. Therefore, the petition under 37 CFR 1.181 is granted and the application is deemed to have never to have become abandoned.

Since the petition has been granted under 37 CFR 1.181, the petitioner's request to have the petition considered under 37 CFR 1.137(b) is dismissed as moot. No petition fee is required for a petition to withdraw holding of abandonment under 37 CFR 1.181. Therefore, the petition fee will be credited to petitioner's deposit account.

The Notice of Allowance and Notice of Allowability are both vacated.

Since the October 6, 2004 Notices have been vacated, the RCE filed with the petition is being filed after a non-final Office action and is unnecessary and improper. The RCE will not be entered and the RCE fee will be credited to petitioner's deposit account.

Technology Center Art Unit 2182 will be informed of the instant decision so that the application can be further examined in due course.

Telephone inquiries should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.



Charles Steven Brantley
Petitions Attorney
Office of Petitions